IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3290 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIDDIQUE MOHMAD SORATHIA

Versus

UNION OF INDIA

Appearance:
MR CL SONI for Petitioner
Ms PJ DAVAWALA for Respondent No. 1
MR DP JOSHI, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE C.K.BUCH

Date of decision: 29/08/2000

ORAL JUDGEMENT [Per : B.C.Patel, J.]

#. The petitioner has filed this petition for seeking various reliefs. Brief facts leading to the present petition are as under.

#. The petitioner has averred in the petition that he was born on 17.9.1954 at Ranavav, District Junagadh in the State of Gujarat. He has annexed a copy of the birth certificate to indicate the aforesaid aspects. He has stated that all family members were residing at Ranavav including his parents since last more than 45 years. The petitioner took education in Victoria Islamic Madresa High School from 1969 to 1971. Copy of the school leaving certificate is annexed with the petition as Annexure : B. The petitioner has stated that his name was entered in the electoral roll which is published by the Government of Gujarat. He has further stated that he is residing with his wife and three children and is maintaining them.

#. From the petition, it transpires that the petitioner obtained Indian passport on 10.8.77. He had been to Pakistan to attend marriage ceremony of his cousin sister in the year 1982. He has come out with a case that unfortunately, he lost his passport in Pakistan and he was put in embarrassing situation. The petitioner applied for the passport from the Government of Pakistan and he obtained the passport from the Government of Pakistan. The petitioner returned to India on the said passport. He has stated that after return to India, he again applied for Indian passport which was issued by the authority on 10.12.84. Thereafter the police department suspected that he is a foreign national and he was asked to surrender his passport on 18.12.87 and in fact, he surrendered his Indian passport, for which a receipt has been issued. The copy of the said receipt is placed on record at Annexure : C.

#. In para 5 of the petition, the petitioner has pointed out that he filed a Regular Civil Suit No. 402/87 in the Court of Civil Judge (Senior Division), Porbandar for declaration that he is an Indian citizen and not a foreigner. Ad-interim injunction was vacated after hearing the parties on 13.6.88 against which Civil Misc. Appeal No. 28/88 was preferred in the court of Assistant Judge, Porbandar. The learned Assistant Judge, Porbandar dismissed the said appeal by order dated 18th September, 1989. Against the said order, revision application No. 1057/89 was preferred before this High Court. The said revision was rejected by this High Court. However, as averred in the petition in para 6, the Court hearing the matter, directed that the petitioner should not be

deported for six months. The petitioner moved an application under section 9 (2) of the Citizenship Act, 1955 to the Central Government for obtaining appropriate order. It appears that the Central Government, to be more precise, Joint Secretary, Ministry of Home Affairs, issued a notice to the petitioner. On 18.7.95, the petitioner forwarded an application for adjournment. That application seems to have been accepted. That application was forwarded with the signature of advocate also. On 17.10.95, the Under Secretary, Govt. of India, addressed a communication to the petitioner, pointing out therein that the hearing is fixed on 22.11.95 at 10.00 a.m. The petitioner was called upon to produce all documentary evidence on which reliance was placed. It was clarified that he was at liberty to request his advocate to represent his case. It seems that the petitioner made an application for adjournment and personal hearing was fixed on 24.1.96 at 10.00 a.m. for which notice was served to the petitioner by Registered Post A.D. Original copy served on the petitioner is placed before us for perusal from which it clearly transpires that it is dated 11th December, 1995 and is addressed to the petitioner at his address. It further transpires that on 17.11.95, advocate addressed a letter to the Joint Secretary, Ministry of Foreign Affairs, New Delhi on the subject matter, requesting to adjourn the matter to a suitable date in the month of February for personal hearing. Zerox copy of the said letter is placed before us today. In reply thereto, it appears that on 27th December, 1995, Under Secretary to the Government of India addressed a letter to the advocate concerned, intimating him that the date of the hearing is fixed on 24.1.96 vide Memo of Ministry dated 11.12.95. Thus, the advocate as well as the petitioner both were informed to remain present for hearing. Before us a grievance is made that no doubt, the copy was served on the petitioner, but it was received on 20th January, 1996 and therefore, it was not possible for the petitioner to make arrangement (for reaching Delhi from Ranavav) and accordingly, the petitioner by a telegram, requested for adjournment and to fix a date in the month of March, 1996. The telegram appears to have been forwarded on 23rd January, 1996. To show the bonafides. One receipt issued by the postal authorities is also placed on record today.

#. It is required to be noted that the petition was filed in 1997 and rule was made returnable on 16th June, 1997. If it would have been clarified before the Court by the Central Government that the notice sent earlier to the petitioner has been received by the petitioner in

time, the question would be different. Receipts issued by the postal authorities for intimation forwarded by the Central Government to the petitioner by Registered Post A.D. for hearing could have been produced before the Court to indicate that what the petitioner says is not right. The petitioner has stated on oath that the intimation was received on 20th January, 1996. In absence of denial by the respondent, the same is to be accepted, more particularly, when despite the opportunity given to the Central Government, it has not filed affidavit in the matter denying the facts. When an important question of citizenship is to be decided, we feel that if adequate opportunity would have been given to the petitioner, the petitioner could not have made any grievance before us. Under the circumstances, we are of the view that as the order is passed without affording proper opportunity to the petitioner, the impugned order should be quashed and the respondent no.1 should be directed to make an order afresh. For this purpose, we direct the petitioner to approach the appropriate authority of Union of India within a period of two weeks from today. With a view to avoid delay, we direct that the respondent no. 1 shall proceed with the matter at the earliest. If the petitioner is not cooperating for hearing, it would be open for the respondent no. 1 to proceed even in his absence.

#. The petitioner shall not leave the territorial limits of taluka Ranavav without prior permission of this Court, save and except for appearing before the Central Government. He shall deposit a sum of Rs. 10,000/- in this Court, which shall be returned to him after the order is made by the Central Government. It is further clarified that the petitioner shall not ask for time from the authorities. The petitioner shall also execute a bond in the sum of Rs. 10,000/- for compliance of the aforesaid conditions.

#. A grievance is made by the petitioner that in this matter, the Central Government has not filed any reply and we also felt it little difficult in the absence of the reply as in the instant case, several questions were raised by the advocate, appearing in the matter about the presumptions to be drawn on the basis of the passport. We would not like to discuss the merits or demerits of the case as the matter is to be decided by the Central Government. Learned advocate, appearing for the Central Government was also in the helpless situation as there was no reply.

#. In view of the above, we allow this petition. Rule

is made absolute accordingly.

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